

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

DERRICK STEVERSON

PLAINTIFF

VS.

CIVIL ACTION NO.:2:12-CV00169-KS-MTP

FORREST COUNTY MISSISSIPPI;
FORREST COUNTY SHERIFF'S DEPARTMENT;
FORREST COUNTY SHERIFF BILLY MCGEE;
MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY;
COMMISSIONER ALBERT SANTA CRUZ;
TROOPER JAMIE ATKINS AND TROOPER
CLAY LOFTIN, Individually, and in their Professional
Capacity as Officers of the Mississippi Highway Patrol;
DEPUTY MATT FINDLEY, CAPTAIN GLEN MOORE,
AND DEPUTY RANDALL SMITH, Individually and in
their Professional Capacity as Officers of the Forrest County
Sheriff's Department; JOHN AND/OR JANE DOES 1-10

DEFENDANTS

MOTION TO DISMISS
OFFICIAL CAPACITY AND STATE LAW CLAIMS

The Mississippi Department of Public Safety ("MDPS"), Commissioner Albert Santa Cruz ("Santa Cruz"), Trooper Jamie Atkins ("Atkins") and Trooper Clay Loftin ("Loftin"), in their individual and official capacity as officers of the Mississippi Highway Patrol (sometimes collectively referred to as the "State Defendants"), file this Motion to Dismiss pursuant to Fed. R. Civ. P 12(b)(6) and state the following:

1. As set forth more fully in their Memorandum of Authorities filed separately with the Court, all official capacity claims against the State Defendants are subject to dismissal in their entirety. Further, all state law claims against the State Defendants should likewise be dismissed. The only claims not subject to this motion to dismiss are those asserted against Atkins and Loftin in their individual capacity which shall be the subject of a subsequent

dispositive motion based on qualified immunity.

2. All claims against the State Defendants, except the individual capacity claims against Atkins and Loftin, should be dismissed for the following four (4) reasons: (1) all of the State Defendants, in their official capacity, are protected from liability by the sovereign immunity guaranteed by the Eleventh Amendment of the United States Constitution to the State of Mississippi, its agencies and state officials acting in their official capacities¹; (2) the MDPS, Santa Cruz, Loftin and Atkins are not “persons” amenable to suit under 42 U.S.C. § 1983; (3) pursuant to Miss. Code Ann. § 15-1-35, the Plaintiff’s state law claims against the State Defendants set forth in Counts II through VI of the Complaint are time-barred; and (4) the Plaintiff’s state law claims are barred by Miss. Code Ann. § 11-46-11.

3. The State Defendants have separately filed their Memorandum of Authorities in Support of Motion to Dismiss and incorporate their arguments and authorities herein.

WHEREFORE, PREMISES CONSIDERED, the State Defendants respectfully request that the Court enter an order granting their Motion to Dismiss for the reasons set forth herein and for the reasons more fully set forth in their Memorandum of Authorities in Support of Motion to Dismiss.

¹This motion does not address the individual capacity claims against Atkins and Loftin which will be the subject of a subsequent dispositive motion based on qualified immunity.

THIS the 2nd day of October, 2012.

Respectfully Submitted,

MISSISSIPPI DEPARTMENT OF PUBLIC
SAFETY; COMMISSIONER ALBERT SANTA
CRUZ; TROOPER JAMIE ATKINS AND
TROOPER CLAY LOFTIN, Individually, and in
their Professional Capacity as Officers of the
Mississippi Highway Patrol

By: JIM HOOD, ATTORNEY GENERAL STATE OF
MISSISSIPPI

By: /s/ Douglas T. Miracle
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed electronically with the Clerk of Court and thereby served on the following persons:

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THIS, the 2nd day of October, 2012.

By: /s/ Douglas T. Miracle
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SPECIAL ASSISTANT ATTORNEY GENERAL